

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMES KALAAUKAHI,

Plaintiff,

v.

Y. SALINAS GOLZALEZ, *et al.*,

Defendants.

Case No. 2:23-cv-1268-JDP (P)

ORDER

Plaintiff has repeatedly failed to respond to defendants' motion to compel, which was filed November 8, 2024. ECF No. 38. On January 6, 2025, after plaintiff failed to timely file a response, I ordered plaintiff (1) to show cause why this action should not be dismissed based on his failure to comply with court orders and failure to prosecute, and (2) to file a response to defendants' motion within twenty-one days. ECF No. 42. In response, plaintiff filed a document that read in its entirety, "Dear courthouse, I would like my case to be heard, it's not fair for them to get way with what they did to me, please I would like to go forward with the case." ECF No. 44 (cleaned up).

In light of that filing and plaintiff's pro se status, I granted plaintiff until February 28, 2025, to file a response to defendants' motion. ECF No. 45. I also warned him that should he fail to comply with that order, it would constitute another failure to comply with a court order and would result in a recommendation that this action be dismissed. *Id.* Plaintiff has now filed a

1 motion to appoint counsel and a response to my prior order. ECF No. 46. Plaintiff explains that
2 without the appointment of counsel, he cannot respond to defendants' motion due to his mental
3 illness. *Id.* The court is sympathetic to the challenges plaintiff faces; however, plaintiff must
4 actively participate in this litigation. He brought this action, and defendants have the right to seek
5 discovery from him. The court has afforded plaintiff numerous opportunities, but without his
6 participation, this case has stalled. Therefore, I will grant plaintiff a final chance to respond to
7 defendants' motion. Should he not, I must recommend that this action be dismissed.

8 Plaintiff's request for counsel is denied. District courts lack authority to require counsel
9 to represent indigent prisoners in section 1983 cases. *Mallard v. United States Dist. Court*, 490
10 U.S. 296, 298 (1989). In exceptional circumstances, the court may request an attorney to
11 voluntarily represent such a plaintiff. *See* 28 U.S.C. § 1915(e)(1); *Terrell v. Brewer*, 935 F.2d
12 1015, 1017 (9th Cir. 1991); *Wood v. Housewright*, 900 F.2d 1332, 1335-36 (9th Cir. 1990).
13 When determining whether "exceptional circumstances" exist, the court must consider plaintiff's
14 likelihood of success on the merits as well as the ability of the plaintiff to articulate his claims pro
15 se in light of the complexity of the legal issues involved. *Palmer v. Valdez*, 560 F.3d 965, 970
16 (9th Cir. 2009) (district court did not abuse discretion in declining to appoint counsel). The
17 burden of demonstrating exceptional circumstances is on the plaintiff. *Id.* Circumstances
18 common to most prisoners, such as lack of legal education and limited law library access, do not
19 establish exceptional circumstances that warrant granting a request for voluntary assistance of
20 counsel.

21 Having considered the factors under *Palmer*, the court finds that plaintiff has failed to
22 meet his burden of demonstrating exceptional circumstances warranting the appointment of
23 counsel at this time.

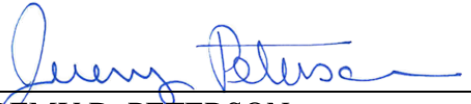
24 Accordingly, IT IS HEREBY ORDERED that:

- 25 1. Plaintiff's motion for the appointment of counsel, ECF No. 46, is DENIED without
26 prejudice.
 - 27 2. Plaintiff must file a response to defendants' motion to compel within twenty-one days.
- 28 This is plaintiff's final opportunity to engage in this litigation. Should he choose not to, I will

1 recommend that this action be dismissed for failure to prosecute and failure to comply with court
2 orders.

3 IT IS SO ORDERED.

4
5 Dated: March 3, 2025


JEREMY D. PETERSON
UNITED STATES MAGISTRATE JUDGE